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 8 UNITED STATES DISTRICT COURT  
 9 DISTRICT OF NEVADA

10 GERALD ARMSTRONG,

CASE NO. CV-N-97-00670 ECR (RAM)

11 Plaintiff,

12 vs.

**DEFENDANT'S MOTION TO COMPEL  
 DISCOVERY ON SHORTENED TIME**

13 DAVID MISCAVIGE and CATHY  
 NORMAN, individuals; CHURCH OF  
 14 SCIENTOLOGY INTERNATIONAL, a  
 California corporation; the RELIGIOUS  
 15 TECHNOLOGY CENTER, a California  
 corporation; the SEA ORGANIZATION,  
 16 a California based unincorporated entity;  
 and the CHURCH OF SCIENTOLOGY  
 17 OF TEXAS, a Texas corporation,

18 Defendants.  
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21 Defendant, Church of Scientology International ("CSI"), moves this court, pursuant to Rule 37 of  
 22 the Federal Rules of Civil Procedure, for an order compelling Plaintiff to appear at a properly noticed  
 23 deposition. (A true and correct copy of the discovery request is attached hereto as **Exhibit "A"**.)

24 CSI additionally requests, as set forth in the affidavit attached hereto as **Exhibit "B"**, that this matter  
 25 be heard on shortened time, since an evidentiary hearing in this matter is presently set for August 20, 1998.

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1 This Motion is made pursuant to LR 26-7 and based upon the Memorandum of Points and  
2 Authorities appended hereto.

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**MEMORANDUM OF POINTS AND AUTHORITIES****Factual Background**

Gerald Armstrong ("Plaintiff") has filed suit in the District of Nevada over a letter sent from Texas to Georgia and has named The Church of Scientology, Religious Technology Center and other Californian ("Defendants"). All Defendants brought Motions to dismiss which were granted in part and denied in part. By the July 10th Order, Judge Edward C. Reed, Jr. set a hearing on the sole issue of Mr. Armstrong's citizenship which would be dispositive of this case. On July 15, 1998, Notice of Taking of Plaintiff's deposition was mailed to Plaintiff's counsel. A dispute has arisen over the refusal of the Plaintiff to attend his duly noticed deposition. Counsel have spoken personally but despite their best efforts cannot resolve this dispute without court action. An expedited hearing is required because of the court hearing set for August 20, 1998.

**Written and Oral Discovery**

On July 15, 1998, Notice of Plaintiff's deposition was set for August 3, 1998. (See Exhibit "A") On July 20, 1998, Mr. Patrick Flanagan, Esq., counsel for Defendant was contacted by "Mary", Mr. Abbott's secretary and told that the August 3, 1998, deposition date was not convenient. Mr. Flanagan was informed that Mr. Abbott would be out of town for vacation the first two weeks of August. Mr. Flanagan requested convenient dates for Mr. Abbott and the Plaintiff and was told that request would be relayed to Mr. Abbott who was in California at the time.

Despite that request, no contact was made with Mr. Abbott until July 24, 1998. In order to accommodate Mr. Abbott, Defendant's offered several dates in the last week of July, before Mr. Abbott left for his vacation. On July 24, 1998, Mr. Flanagan received a voice mail message from Mr. Abbott at approximately 12:41 p.m., stating that Mr. Armstrong would not be available to have his deposition taken on July 27th, 28th or July 29, 1998. Mr. Abbott further stated that Mr. Armstrong would not be available on August 3, 1998. Mr. Abbott went on to state that he believed that the notice of deposition was defective in that it does not give Mr. Armstrong 30 days notice.

At approximately 3:20 p.m., Mr. Flanagan telephoned Mr. Abbott and spoke at length regarding a deposition date for Mr. Armstrong's deposition. Mr. Abbott stated at that time that he had no intention of



1 appearing at any deposition for Mr. Armstrong until "the records in Marin County are unsealed."<sup>1</sup> Counsel  
2 spoke at length regarding the deposition of Mr. Armstrong, but Mr. Abbott refused to provide any  
3 alternative dates or times when Mr. Armstrong would be available. When asked for any date prior to the  
4 court hearing, Mr. Abbott refused to agree to any deposition of Plaintiff unless ordered by the Court.

5 This Motion follows.

6 **ARGUMENT**

7 Counsel have an obligation to "secure the just, speedy and inexpensive determination of every  
8 action." F.R.Civ.P. 1. To further this goal, counsel must personally consult with each other and make a  
9 "sincere effort" to resolve discovery disputes. LR 26-7(b). The sole issue determinative of the viability of  
10 the lawsuit in this District is simply whether Plaintiff satisfies the criteria for citizenship to accord subject  
11 matter jurisdiction. The sole purpose of the deposition of Plaintiff at this juncture to inquire into this limited  
12 issue. Plaintiff cannot file suit and then hide.

13 **The Notice is Proper**

14 Notice of Taking was mailed on July 15, 1998 and the date set was August 3, 1998. Adding three  
15 days for mailing, the Notice would have been received on or about July 18, 1998. Mr. Armstrong would  
16 have had 15 days notice. Federal Rules simply require that a party be given "reasonable notice." Fed. R.  
17 Civ. P. 30(b)(1). Counsel submits that this is reasonable notice. The argument that the dates in August are  
18 inconvenient are belied by the fact that Plaintiff has attempted to Notice deposition of Defendants for that  
19 same time period.(Ex. "C"). Finally, statements of Plaintiff's counsel make it clear that Plaintiff will not  
20 appear ant any deposition without an order of the Court.

21 FRCP 37(4)(d) provides for sanctions against the recalcitrant party or his/her counsel if the party  
22 fails to attend his deposition. Moreover, FRCP 37(a)(4) mandates that in the event a motion pursuant to  
23 FRCP 37(a)(2) is granted, the court shall award attorney's fees and costs in favor of the moving party.  
24 Finally, FRCP 37(d) states that the failure to answer "may not be excused on the ground that the discovery  
25 sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule  
26 26(c)." There are no grounds which excuse the refusal of Plaintiff to attend his own deposition.

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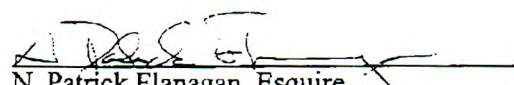
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<sup>1</sup> Mr. Armstrong has two bench warrants for his arrest for contempt of court in Marin County, California and is presently a fugitive from justice.

CONCLUSION

Despite good faith efforts to accommodate counsel it is clear that the Plaintiff simply will not attend his own duly noticed deposition without a court order. It is respectfully requested that the Court issue an Order compelling the attendance of the Plaintiff at his deposition. Pursuant to FRCP 37(4)(d) your undersigned certifies that after consultation with opposing counsel, counsel have been unable to resolve this matter. Defendant also requests attorney fees and costs be awarded to Defendant for this Motion.

DATED this 29<sup>th</sup> day of July, 1998.

  
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